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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,512	10/09/2001	Toru Mineyama	09812.0172-00000	6341

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EXAMINER	
VAN BRAMER, JOHN W	

ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
12/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/973,512	MINEYAMA ET AL.	
	Examiner	Art Unit	
	JOHN VAN BRAMER	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) *2-8,10-16,18 and 21-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,9,17,19,20 and 27-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed on October 6, 2008, cancelled no claims. Claims 1, 9, 17, and 20 were amended and new claims 27-34 were added. Claims 2-8, 10-16, 18, and 21-26 have been withdrawn from prosecution. Thus the currently pending claims addressed below are claims 1, 9, 17, 19, 20, and 27-34.

Election/Restrictions

2. Claims 18, and 21-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 6, 2008. The traversal is on the ground(s) that claim 18 is not "independent and distinct" from claim 1. This is not found persuasive because the claim is not required to be "independent and distinct", but rather it is required to be "independent or distinct". As recited in the office action the original claims 1 and 9 are directed to tracking viewer tendencies for a first viewer and generating a programming guide and customer analysis based upon a single viewer. This is distinct from newly submitted claims 18 and 21-25 which are directed towards tracking the tendencies of a group of individuals and generating a programming guide and customer analysis information based upon the tendencies of a group. Restriction for examination purposes as indicated is proper because all these inventions listed in the action dated June 27, 2008 are independent or distinct

for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);

(d) the prior art applicable to one invention would not likely be applicable to another invention;

(e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

3. The 35 U.S.C. 112 rejection of claim 19 is maintained. The applicant's specification does not describe the programs that the first viewer "absolutely wishes to view". The cited passage of the applicant's specification (page 43) describes the user inputting information regarding programs that the user wants to view without

failure and calling these groups an “absolute viewing program group”. Since claim 1, from which claim 19 depends discloses that the reorganization of the second electronic television programming guide is done in accordance with the fist viewer tendency information which is generated on the basis of a viewing log that stores information about programs viewed on the terminal apparatus, but does not indicate that the first viewer inputs information regarding an “absolute viewing program group” the applicants recitation in claim 19 that the second programming guide includes a group of programs that the first viewer absolutely wishes to view is not supported in the specification. The examiner suggests, amending claim 1 to include the input of such information and generating the second programming guide based on both the viewing log and the “absolute viewing program group” that is input directly by the first viewer. The examiner also suggests using the actual terms found within the specification such as "wants to view without failure" instead of "absolutely wishes to view".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 9, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawler (U.S. Patent Number: 5,758,259) in view of Cannon (U.S. Patent Number: 6,029,176)

Claims 1, 9 and 17: Lawler discloses a server operational expenses collecting method, a server, a computer-readable medium comprising:

a. Generating first viewer tendency information for a first viewer on the basis of a program viewing log, the program viewing log storing information about programs viewed by the first viewer on a terminal apparatus, The first viewer tendency information indicating the first viewer's tendency to view programs on the terminal apparatus. (Fig. 3b; Fig. 3c; Col 2, lines 3-30; Col 2, lines 41-44; and Col 5, line 52 through Col 6, line 21)
b. Reorganizing a first electronic television program guide into a second electronic television programming guide tailored to the first viewer, the reorganizing being done in accordance with the first viewer tendency information. (Col 4, lines 42-57; and Col 5, lines 21-40)
c. Generating customer analysis information based on the first viewer tendency information. (Col 7, line 62 through Col 8, line 34)

While Lawler does not specifically state that it provides the customer analysis information to an advertiser or collects expenses for the provision of customer analysis information from the advertiser, the analogous art of Canon (U.S. Patent Number: 6,029,176) teaches that it is well known to provide television viewing habit

information to advertisers and to charge advertisers for providing them with such information (Col 2, lines 1-48). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the customer analysis information to the advertiser for a fee. The rational for doing so is that common sense dictates that the monitoring and gathering of such information is costly and that one would use commonly known methods for generating a revenue stream to help offset said cost since selling the gathered information to advertisers is one of a limited number of predictable methods for generating a revenue from the gathered information. Additionally, one would be motivated to provide such information to advertisers in order to provide advertisers with effective tools for real-time response to questions about viewing habits and to help them to determine or estimate the probable effectiveness of a given advertising strategy (Canon: Col 2, lines 1-48)

Claim 19: Lawler and Canon disclose the server operational expenses collecting method according to claim 1, wherein the second electronic programming guide includes a group of programs that the first viewer wants to view. (Lawler: Col 5, line 52 through Col 6, line 33)

Claim 20: Lawler and Canon disclose the server operational expenses collecting method according to claim 1 wherein the second electronic programming guide organizes programs into virtual channels, each virtual channel including programs

from a plurality of program channel frequency bands. (Lawler: Fig. 3b; and Col 4, lines 42-57)

Claim 28: Lawler and Canon disclose the method according to claim 1, wherein the program viewing log includes a length of time the programs were viewed, and wherein generating first viewer tendency information includes determining whether the length of time each of the programs was viewed exceeds a threshold. (Lawler: Col 10, lines 6-19)

Claim 29: Lawler and Canon disclose the method according to claim 28, wherein the threshold is higher for programs of different categories. (Lawler: Col 5, lines 20-40; and Col 10, lines 6-19)

Claim 30: Lawler and Canon disclose the method according to claim 29. While Lawler and Canon do not specifically state the threshold for a news category is lower than a threshold for a drama category, Lawler does disclose that viewers receiving the information may be periodically polled in order to acknowledge there presence and assuring that the program is being received by the viewer in Col 10, lines 6-19. It would have been obvious to one of ordinary skill in the art at the time the invention was made that the polling must take place over the duration of the program itself. Thus, programs with shorter duration, such as news program would require a lower threshold than programs such as dramatic movies which have a longer duration.

The rational for such a lower threshold is that common sense dictates that polling for a 30 minute program must occur within the first 30 minutes in order to be sure the viewer watched the program, while polling for a 2 hour movie can occur any time within the 2 hour time frame. As there are a limited number of predictable thresholds from which to choose for polling within a program of a given time length and the viewer initially chose to watch the program, it would be predictable to choose a threshold that is closer to the end of any given program in order to ensure that that majority of the program was indeed viewed by the viewer.

Claim 31: Lawler and Cannon disclose the method of claim 1, wherein the first viewer tendency information includes values for titles, categories, and keywords of the programs viewed by the first viewer. (Lawler: Col 5, line 52 through Col 6, line 33)

Claim 32: Lawler and Cannon disclose the method of claim 31, further comprising providing the first viewer with a button for inputting a program rating for the programs viewed by the first viewer. (Lawler: Col 10, lines 20-30)

Claim 33: Lawler and Cannon disclose the method of claim 32, further comprising incrementing the value for the title, category, and the keyword of a program being watched when the viewer presses the button. (Lawler: Col 5, lines 4-7; and Col 10, lines 20-30)

Claim 34: Lawler and Cannon disclose the method of claim 33, further comprising using the value for the title, the category, and the keyword of the program being watched when the first viewer presses the button to determine other programs to include in virtual channels in the second electronic television programming guide. (Lawler: Col 2, lines 3-30; Col 8, lines 45-62; and Col 10, lines 6-30)

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawler (U.S. Patent Number: 5,758,259) in view of Cannon (U.S. Patent Number: 6,029,176) as applied to claim 1 above, and further in view of Lee et al. (PG PUB: US 2002/0007368)

Claim 27: Lawler and Cannon disclose the method according to claim 1, wherieng the program viewing log includes program titles, program categories, and program keywords (Fig. 3b; Fig. 3c; Col 2, lines 3-30; Col 2, lines 41-44; and Col 5, line 52 through Col 6, line 21). While Lawler and Cannon do not specifically that the date and day of the week on which programs viewed by the first viewer were broadcast, Lawler does disclose displaying preferred programming available on a date and at a time selected by the viewer (Col 4, lines 43-57). Thus such information is available in the invention disclosed by Lawler. The analogous art of Lee discloses gathering viewer habit information including the running time (which would include the date and time) (paragraphs 34-36). Thus it would have been obvious to one of ordinary

skill in the art at the time the invention was made to include the date (which includes the day of the week) on which programs were viewed. The rational for including the date is that Lawler discloses in Col 5, line 60 through Col 6, line 7, that most viewers have relatively regular viewing habits and determining a viewing history will highlight such habits. However, he further discloses that to the extent the viewing habits remain unchanged, the viewing history can provide a relatively accurate basis for predicting or selecting the future programming that the viewer would prefer to receive. Thus, including the date in the viewing history would provide an indication of when or if changes in viewing habits occur and thus allow for the determination of how stable the viewing habits are.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 9, 17, 19, 20, and 27-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like

assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JV
/J. V./
Examiner, Art Unit 3622

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622